



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 24, 1991

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Ms. Shirley A. DeLibero
Executive Director
NJ TRANSIT
McCarter Highway and Market Street
P.O. Box 10009
Newark, N.J. 07101

Dear Ms. DeLibero:

You have requested that EPA clarify NJ TRANSIT's classification as an underground storage tank ("UST") owner in order to determine which methods for assuring financial responsibility are available to NJ TRANSIT. You ask specifically about classification as a state or local government. In answering this question, I start from the premise that all owners and operators of petroleum USTs must comply with the Subpart H Financial Responsibility regulations unless they are exempted under one of the express provisions of section 280.90. See 40 CFR § 280.90(a). NJ TRANSIT does not qualify as a state agency under 280.90(c) because the debts of NJ TRANSIT are not the debts of the State of New Jersey. You acknowledge this in your letter. Thus NJ TRANSIT must comply with the provisions of 40 CFR § 280.93.

If NJ TRANSIT is not a state agency under the UST regulations, the next question is whether it is a local government. Local government entities are required to meet the financial responsibility provision. At the time the agency initially promulgated the financial responsibility rules it said that local government includes special purpose local entities which are generally designated as either public authorities, transit authorities, or power authorities. The Agency restated and clarified its view of what constitutes a local government in the June 18, 1990 preamble to the proposed additional mechanisms for local governments to demonstrate financial responsibility. As with the 1988 rule, the preamble again mentions transit authorities as an example of special purpose local governments (55 FR 24695) and suggests that the category includes districts created by State enactment (55 FR 24696). Thus it would appear that NJ TRANSIT qualifies as a local government for the purpose of the financial responsibility regulations.

Section 280.91 sets out the schedules by which owners and/or operators of USTs must comply with the financial responsibility provisions. Assuming that NJ TRANSIT is a local government, NJ TRANSIT will be required to comply by a date one year after the promulgation of additional mechanisms for use by local government entities to comply with the financial responsibility requirements for USTs containing petroleum. 55 FR 46025 (October 31, 1990). As

a local government, NJ TRANSIT would be eligible to use any of the mechanisms in the existing rules, or any new mechanisms promulgated specifically for local governments.

I hope that this letter answers your questions. If I can be of further assistance, please give me a call at 703/308-8882.

Sincerely,

/s/

Sammy K. Ng, Acting Director
Policy and Standards Division
Office of Underground Storage Tanks

cc: Lee R. Tyner